

ZONING BOARD OF REVIEW

MINUTES

WEDNESDAY, May 6, 2009

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, May 6, 2009 at 7:30 p.m. at the Tiverton Town Hall, 343 Highland Road.

1. A petition has been filed by the Tiverton Yacht Club, 58 Riverside Drive requesting a variance to Article V, Section 1 of the Tiverton Zoning Ordinance in order to permit existing lockers to remain located at 0 Riverside Drive, Tiverton, RI being Map 6-5, Block 73, Card 30 on Tiverton Tax Assessor's maps closer to the side yard setback than currently allowed in a waterfront zoning district.

DECISION: Attorney Tremblay requested a one month continuance on this petition, due to the request of an abutter. The abutter is having their property surveyed.

2. A petition has been filed by the Tiverton Yacht Club of 58 Riverside Drive, Tiverton, RI requesting a variance to Article XIV Section 5 of the Tiverton Zoning Ordinance in order to install an individual septic disposal system (ISDS) within 200 feet of the Sakonnet River to replace an existing ISDS at 58 Riverside Drive, Tiverton, RI being Map 6-5 Block 70 Card 5 on Tiverton Tax Assessor's maps because extension, enlargement or moving of a legal non-conforming use requires a variance in an R40 zoning district.

DECISION: Attorney Tremblay requested to withdraw this petition without prejudice. Mr. Tremblay stated that all parties are in agreement.

3. A petition has been filed by Olive M. & Rosemary Eva of 4019 Main Road, Tiverton, RI appealing the decision of the Building Official to issue a permit on January 13, 2009 for a freestanding sign located at 3988 Main Road, Tiverton, RI being Map 2-3 Block 125 Card 16 on Tiverton Tax Assessor's Maps and located in an R80 zoning district.

DECISION: Mr. Leary appeared before the board and agreed to a continuance which Mr. Allard, the landowner requested. Mr. Leary stated that this would be the last time that he is agreeing to any continuances put forth by Mr. Allard. Mr. Jackson made a motion to continue this petition. Ms. Krumholz seconded. The

Vote was 4-1. Voting for were Mr. Collins, Mr. Jackson, Ms. Krumholz & Ms. Gescheidt. Opposed was Mr. Taylor.

4. Remanded by Superior Court to allow for the introduction of new evidence and reconsideration by the board of their decision dated April 3, 2008 on the matter of: A petition has been filed by Bryan N. Sanford, Jr. of 84 Cynthia Avenue, Tiverton, RI appealing a decision of the Tiverton Building/Zoning Official to issue a notice of violation dated January 28, 2008 to cease and desist construction of a new single family dwelling located at Cornell Road (0 Crandall Road) Tiverton, RI being Map 4-8 Block 140 Card 4 on Tiverton Tax Assessor's Maps and located in a R80 zone.

DECISION: Attorney Ruggeiro stated that the town has been in touch with the Appellant's attorney and this matter is trying to get resolved. He requested that this petition be continued to next month. Ms. Gescheidt made a motion to continue. Mr. Taylor seconded. The Vote was unanimous. Voting were: Mr. Collins, Mr. Taylor, Ms. Krumholz, Mr. Jackson & Ms. Gescheidt.

5. A petition has been filed by Giuseppe Moro by Jeremiah R. Leary of 1340 Main Road, Tiverton, RI requesting variances from Article V Section 1 of the Tiverton Zoning Ordinance in order to raze an existing dwelling and construct a new dwelling at 60 Philip Avenue, Tiverton, RI being Map 1-2 Block 167 Cards 33 and 51 on the Tiverton Tax Assessor's maps closer to the front, rear and side yard property lines than currently allowed and located in a R80 zoning district.

DECISION: Attorney Leary appeared on behalf of the petitioner. Mr. Moro would like to remove the existing 585 square foot trailer along with the 200 square foot shed and replace both with a 1,010 square foot dwelling. Also, the petitioner is requesting a special use variance due to the height of the new dwelling will be 27 feet, which is two feet over the allowed height.

Exhibit A, Letter from the Building Official, was marked.

Exhibit B, Letter on the Septic System dated May 5, was marked.

Exhibit C, Photographs taken by Nathan Godfrey, were marked.

Mr. Giuseppe Moro was called as a witness and stated that him and his wife would like to construct a new dwelling where the existing trailer is. The reason he needs the extra two foot height is that the new dwelling is going to be built on piers because of the flood zone.

William Smith, engineer, was called as a witness and explained that where this house will be built is in a flood zone, and will need to be built according to flood

zone regulations. The piers will be designed by a structural engineer to withstand hydrostatic forces. The house is a one story structure which will be 18 feet high including the roof on top of 9 foot piers, which accounts for the 27 foot total structure height.

Also, he is designing a state of the art sand filter septic system to replace the existing one. The new system will not make the 100 foot requirement for a new lot, but it will be farther away than the previous system, and will be an improvement to the existing system.

Nathan Godfrey, real estate expert, was called as a witness and stated that after his review of the property it is his opinion that the variance criteria has been met. He also testified that the new ISDS system will be an improvement to the area and will be consistent with the surrounding development in the area. With regard to the 27 foot height, Mr. Godfrey stated that it would not be a detriment to the public health, moral, safety and welfare and would not adversely effect the general character of the neighborhood. He also stated it wouldn't endanger any pedestrian or vehicular traffic, and it would not create a nuisance in the neighborhood. Mr. Godfrey believes that is it also consistent with the comprehensive community plan.

Numerous neighbors voiced their concerns over the possible flooding in the area.

The board went into Executive Session and discussed the matter. Ms. Gescheidt made a motion to approve both variances. Ms. Gescheidt stated that the new ISDS system will promote the public health, moral, safety and welfare. Also, it will be consistent with the general characteristics of the neighborhood and will not endanger pedestrian or vehicular traffic. Ms. Gescheidt also stated that it is consistent with the comprehensive plan. Ms. Krumholz seconded. The Vote was 4-1. Voting for were Mr. Collins, Mr. Jackson, Ms. Krumholz & Ms. Gescheidt. Opposed was Mr. Taylor.

6. A petition has been filed by Giuseppe Moro by Jeremiah R. Leary of 1340 Main Road, Tiverton, RI requesting a special use to Article 7 Section 4.b. of the Tiverton Zoning ordinance in order to raze an existing dwelling and construct a new dwelling at 60 Philip Avenue, Tiverton, RI being Map 1-2 Block 167 Cards 33 & 51 on the Tiverton Tax Assessor's maps exceeding maximum height currently allowed in a R80 zoning district.

DECISION: Attorney Leary appeared on behalf of the petitioner. Mr. Moro would like to remove the existing 585 square foot trailer along with the 200

square foot shed and replace both with a 1,010 square foot dwelling. Also, the petitioner is requesting a special use variance due to the height of the new dwelling will be 27 feet, which is two feet over the allowed height.

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ISDS system will promote the public health, moral, safety and welfare. Also, it will be consistent with the general characteristics of the neighborhood and will not endanger pedestrian or vehicular traffic. Ms. Gescheidt also stated that it is consistent with the comprehensive plan. Mr. Jackson seconded. The Vote was 4-1. Voting for were Mr. Collins, Mr. Jackson, Ms. Krumholz & Ms. Gescheidt. Opposed was Mr. Taylor.

7. A petition has been filed by Kenneth M. Tavares by Jeremiah R. Leary of 1340 Main Road, Tiverton, RI requesting a variance to Article IV, Section 7 and Article V, Section 2 of the Tiverton Zoning Ordinance in order to maintain a sales office in a portion of an existing structure located at 350 Brayton Road, Tiverton, RI being Map 3-8 Block 132 Card 11C on Tiverton Tax Assessor's Maps whereby the use is not allowed and exceeding the allowed permitted use structures in a R80 zoning district

DECISION: Attorney Leary appeared on behalf of the petitioner.

Exhibit A, package of documents consisting of a survey waiver from the building inspector, Mr. Tavares' Federal Firearm license, State sales permit, a letter from the Chief of Police regarding Mr. Tavares and drawing of the floor plan of the building in which Mr. Tavares will be using, was marked.

Exhibit B, photographs, were marked.

Mr. Steven Carvalho was called as a witness and testified that he owns this land and building with his wife. They currently have a kennel in which he raises, breeds and trains Labrador Retrievers. He currently maintains an office in a building on the property which he uses in that business. He is intending to share this office with his cousin, Mr. Tavares.

Mr. Kenneth Tavares was called as a witness and testified as follows: He currently runs a sporting goods business out of Fall River, Massachusetts, which includes archery equipment, hunting and sporting supplies. He stated that he has probably sold one gun in 20 years. He does a lot of transfers of guns. He does not have inventory. He sells from catalogues. His customers look through the catalogues. When they want an item, he orders it and charges an extra 10% to 15% as his profit.

The policy for selling or transferring guns is that he has to fill out a form with the person's name, social security number, their address and send it to the ATF. After that person qualifies after seven days, the gun comes in and Mr. Tavares will put it in a safe. The customer will come in and pick up the gun. The gun is

never loaded. If there is ammunition involved, said ammunition and gun cannot be stored in the same place. They have to be in two separate containers. Mr. Tavares stated that there will be a security system set up. He also stated that just by virtue of having the kennel there, the dogs are an added back up system for any intruders.

Mr. Gareth Eames was called as a character witness for Mr. Tavares. He stated that he belongs to the Rod & Gun Club, also. He has known Mr. Tavares for a short period of time, but all his dealings with him have been very straight forward.

The Board went into Executive Session to discuss the matter. Ms. Gescheidt made a motion to grant this subject to certain conditions. (1) That the board review it in two years to make sure that it hasn't gone beyond what was authorized, and (2) that the variance be personal to the applicant and that if he ceases to operate his business before the board's review period that the variance would extinguish.

8. A petition has been filed by Luis M. Pacheco, Vice President All Fresh Donuts d/b/a Sip 'n Dip Donuts requesting a special use permit to Article IV Section 8.e. of the Tiverton Zoning Ordinance in order to construct drive through windows at 2 Crandall Road, Tiverton, RI being Map 4-9 Block 144 Card 5 on Tiverton Tax Assessor's maps whereby a special use permit is required for this use in a General Commercial zoning district.

DECISION: Attorney William Dennis appeared on behalf of the applicant. Mr. Dennis stated that the applicant met with the planning board in March, and after that meeting the applicant received a unanimous recommendation of the board members to this body for the special use permit.

Ronald Blanchard from Site Engineering was called as a witness and testified as to the following criteria:

1. Adequate provision for water service, sanitary sewerage, disposal and fire protection: Mr. Blanchard stated that it currently is using the public water supply. For fire protection, there is a hydrant across the street and that's shown on the plans. For sewerage, it is currently being supplied to the building, as shown on the plans.
2. Compatibility with neighboring uses. Mr. Blanchard has been out to the site and stated that this is compatible with the surrounding uses. There is a Dunkin Donuts in the area with a drive-thru window. Also, there are a number of other businesses in the area.

Mr. Blanchard also explained that there are two windows, so they can service two customers at the same time. There will be no speaker system. You also can walk in and eat inside.

Luis Pacheco was called as a witness and described the following: His business is a doughnut and coffee business. The hours will be from 5:00 a.m. to 11:00 p.m. There is no speaker system and there will also be no canopies. The lights for the parking area will be appropriate so it will not shine onto the neighboring properties.

Exhibit A, Resume of Paul Bannon, transportation engineer, was marked as an exhibit.

Paul Bannon, transportation engineer, was called a witness and stated as follows: The lot covers approximately an acre. He is of the opinion that this business will not endanger vehicular or pedestrian traffic. They are limiting only one access point for traffic to enter and exit the property. There are stones along the Crandall Road side, prohibiting any traffic from exiting and entering that side of the premises.

Exhibit B, Comprehensive Community Plan, was marked.

Attorney Dennis marked Exhibit B and asked the board to take note of the general commercial area and stated that this property falls in that guideline and therefore, complies with the Comprehensive Community Plan.

Mr. Christopher Spencer, Town Planner, stated that this applicant came before the planning board and was very willing and cooperative to make changes to their plan to satisfy the board's concerns.

One neighbor voiced their interest in fixing the sidewalk areas and questioned who would be responsible for doing so. He stated he was not opposed to the business being there.

The Board went into Executive Session to discuss the matter. Ms. Krumholz made a motion to grant the variance stating that this will be an improvement to the area. It is consistent with the surrounding neighborhood. The plans for the entrances and exits are appropriate for the safety of pedestrian and vehicular traffic. Also, it will not be a nuisance to the neighborhood. Ms. Gescheidt seconded. The Vote was unanimous. Voting were: Mr. Collins, Mr. Taylor, Ms. Krumholz, Mr. Jackson & Ms. Gescheidt.

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